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TRANSCRIPT OF PROCEEDINGS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

IN THE MATTER OF:

TRINITY BROADCASTING OF FLORIDA, INC.
and
GLENDALE BROADCASTING COMPANY

MM DOCKET NO. 93-75

Miami, Florida

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FREE STATE REPORTING, INC.
Court Reporting Depositions
D.C. Area (301) 261-1902
Balt. & Annap (410) 974-0947

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OFFICE OF THE SECRETARY

In the matter of:

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and
GLENDALE BROADCASTING COMPANY

MM DOCKET NO. 93-75

Miami, Florida

The above-entitled matter come on for hearing pursuant to Notice before Judge Joseph Chachkin, Administrative Law Judge, at 2000 L Street, N.W., Washington, D.C., in Courtroom No. 3, on Wednesday, December 1, 1993, at 9:30 a.m.

APPEARANCES:

On behalf of Trinity Broadcasting of Florida, Inc.:

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On behalf of Glendale Broadcasting Company:

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On behalf of S.A.L.A.D.:

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1 APPEARANCES:

2 On behalf of Chief, Mass Media Bureau:

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5 2025 M Street, NW
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E X H I B I T S

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25 Hearing began: 9:30 a.m. Hearing Ended: 4:00 p.m.

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1 P R O C E E D I N G S

2 JUDGE CHACHKIN: Let's go on the record. I just
3 want to mention a couple of things in connection with the
4 proposed video taping of the proceeding that concerned me, and
5 I want to specifically mention to you, Mr. Topel, and find out
6 -- tell you what my concerns are. Number one, the rules make
7 clear that the transcript of the testimony, the exhibits,
8 constitute the official record of the proceeding, so I must
9 have a representation from you that you will not use any video
10 tapes as a substitute for the official record.

11 MR. TOPEL: You have that representation. That was
12 not our intention at all, Your Honor.

13 JUDGE CHACHKIN: And, secondly, my concern is -- I
14 assume there will be sequestration of witnesses, so I'm
15 equally concerned that the video tape not be given or shown to
16 witnesses who are going to testify in this proceeding until
17 after they've -- well, in other words, I recognize that if the
18 -- if it -- if the station decides -- if the network decides
19 to broadcast the material, obviously this may -- there's no
20 way I can preclude anyone from watching the, the video. My
21 concern is that it be used -- shown to witnesses who are going
22 to testify which would, would -- obviously would affect the
23 sequestration.

24 MR. TOPEL: Your Honor, you have that
25 representation. We would not do that and I'm not how we would

1 deal with the issue of over-the-air broadcasts which arises
2 with respect to CNN, as well. Someone --

3 JUDGE CHACHKIN: But that's going to be limited to
4 --

5 MR. TOPEL: Someone --

6 JUDGE CHACHKIN: I can expect in the case of CNN
7 it's going to be a very -- assume -- I must assume it's going
8 to be a very small portion of a broadcast that's going to be
9 carried, maybe an excerpt of, I don't know, five or ten
10 minutes. I'm only guessing, but I don't think they have in
11 mind covering the -- because CNN after all -- if it was -- for
12 instance, what's the name of that network?

13 MR. SCHONMAN: Court TV.

14 JUDGE CHACHKIN: Well, not Court TV. They also have
15 commercials. They only carry small bits of it. But, for
16 instance, those that carry congressional sessions in which the
17 --

18 MR. SCHONMAN: E -- C-Span.

19 JUDGE CHACHKIN: Something like that. But CNN, as
20 far as I know, doesn't carry entire proceedings, so I would
21 imagine they would only carry small bits of it.

22 MR. TOPEL: Your Honor, you do have my
23 representations. We will not use any, any video tape to show
24 to any witnesses who will be testifying and we will use our
25 best efforts to steer them away from any broadcast that CNN

1 might make of the matter.

2 JUDGE CHACHKIN: And also -- you've also represented
3 to me that the video tape will not be used as a substitute for
4 the official record.

5 MR. TOPEL: Absolutely, Your Honor.

6 JUDGE CHACHKIN: One other thing I just want to make
7 clear, you would not accept a proposal whereby you would have
8 the same rights as CNN, namely -- well, if CNN, for instance,
9 decides only to televise video tape portions of, of a witness'
10 testimony, I would give you the right to video tape the entire
11 testimony, but apparently that is not satisfactory. You want
12 the right to video tape the entire proceeding.

13 MR. TOPEL: Yes, Your Honor. On the extension of
14 that principle that, that just like a witness' entire
15 testimony may be necessary to complete coverage of that
16 witness' particular testimony, the testimony of all witnesses
17 may be pertinent to give proper coverage to the entire
18 proceeding.

19 MR. COHEN: Your Honor, could I ask a question of
20 Mr. -- ask --

21 JUDGE CHACHKIN: Yes.

22 MR. COHEN: I know -- I realize that I don't ask
23 Mr. Topel questions. I direct my questions to you.

24 JUDGE CHACHKIN: All right.

25 MR. COHEN: I didn't, didn't get any sense yesterday

1 as to whether TBN has any intention of broadcasting any
2 portion of what they're going to be taping, and I wonder if,
3 if you could ask Mr. Topel what TBN's intentions are on that
4 matter. My sense from what Mr. Topel was saying yesterday was
5 that TBN would like to tape this and that there was no plan to
6 broadcast it, but that they might broadcast it or they may not
7 broadcast it or whatever. And it seems to me that's something
8 that ought to be on the record.

9 JUDGE CHACHKIN: Well, let's find out from
10 Mr. Topel. Do you have any indication --

11 MR. TOPEL: I don't know. I don't think an
12 intention would be formed until the events transpire and a
13 judgment is made as to whether there -- what the proper use of
14 them is. I assume CNN is in the same position.

15 JUDGE CHACHKIN: But when you say the proper usage,
16 I assume CNN is using --

17 MR. TOPEL: Only to broadcast. We're not trying to
18 influence this proceeding in the slightest way, Your Honor,
19 with the video taping.

20 MR. COHEN: That's not my question, Your Honor.
21 It's clear from what you've told us that CNN intends to
22 broadcast. Otherwise, why would they be speaking to you? So
23 that's not an issue. What I don't understand is why you
24 should authorize Trinity to tape unless Trinity has an
25 intention to broadcast because if they don't have an intention

1 to broadcast, then it's not in a journalistic sense. This is
2 just for whatever purposes. And it seems to me that you're
3 entitled to a representation that TBN does intend to broadcast
4 all or a portion of what they tape, and I haven't heard that
5 representation and without it, it seems to me you ought not to
6 go forward -- I say that to you most respectfully. Obviously,
7 this is done with discretion, but you should consider not
8 going forward with giving TBN permission to tape.

9 JUDGE CHACHKIN: What is your response, Mr. Topel?

10 MR. TOPEL: I don't think there's any legal basis
11 for the statement that Mr. Cohen made. First of all, I don't
12 think Your Honor does know or is in a position to receive or
13 ratify commitments from CNN about what CNN is going to do.
14 TBN is a broadcast, TBN is a broadcast licensee that can cover
15 news and then make judgments based on its determination of the
16 newsworthiness of the events. I don't think that it would be
17 -- to set a rule that there's a qualification on, on TBN
18 journalisticly that they must broadcast something based on an
19 assumption that CNN has committed to broadcast has any legal
20 foundation at all.

21 JUDGE CHACHKIN: Well, let me say this. You've made
22 representations to me as to the manner in which you will not
23 use this material.

24 MR. TOPEL: Absolutely.

25 JUDGE CHACHKIN: Can I also get a representation

1 from you that you will use it only for broadcast purposes?

2 Otherwise --

3 MR. TOPEL: That's the only intent that I'm aware
4 of.

5 JUDGE CHACHKIN: Well, that's --

6 MR. COHEN: That's not a representation.

7 JUDGE CHACHKIN: I want a representation. I want
8 you to talk to whoever you have to talk to. I want to be able
9 to have an unqualified representation that you will use this
10 material only for broadcast purposes. Then because that is --
11 in other words, you can decide not to use any of it for
12 broadcast purposes or parts of it, but I don't know what other
13 means or other purposes it might be used, but I want to make
14 sure that what we're dealing here with is strictly a question
15 of allowing journalists to use this material for broadcast
16 purposes and not for any other purpose. I think that's a fair
17 request. If it's --

18 MR. TOPEL: I will verify no other intent. I assume
19 using it for broadcast purposes would include reviewing it
20 prior to make a determination of whether to broadcast it or
21 not.

22 JUDGE CHACHKIN: I'm not in any way restricting your
23 editing of it, but I want to make sure it's only going to be
24 used for broadcast purpose and no other purpose.

25 MR. TOPEL: Your Honor, I will verify that, but I

1 | certainly am aware of no other intent or purpose.

2 | JUDGE CHACHKIN: All right. I'd like to have
3 | verification. Yes, Mr. Honig?

4 | MR. HONIG: Your Honor, yesterday S.A.L.A.D. made
5 | the suggestion that some sort of pool arrangement --

6 | JUDGE CHACHKIN: Well, there's no pool arrangement
7 | here because CNN is the only one who's expressed any interest.
8 | We don't have a situation with six or seven networks want to
9 | broadcast material and CNN only wants to broadcast a portion
10 | of one witness' testimony, so we don't have a CNN -- we don't
11 | have a pool situation here.

12 | MR. HONIG: But anticipating, Your Honor, that there
13 | might be more than one --

14 | JUDGE CHACHKIN: Well, there's no sense anticipating
15 | that. There hasn't been a great demand to televise this
16 | proceeding. If such a thing happens then we can worry about
17 | it, but --

18 | MR. HONIG: Maybe you've made -- clear. There -- as
19 | I understand it, there have been two entities, Trinity and CNN
20 | which have expressed interest in providing paid coverage for
21 | journalistic purposes. We've done some research and our --
22 | and I'd like to distribute and provide Your Honor with a, a
23 | written motion to permit television coverage. We've
24 | summarized the results of our research as well as some
25 | guidelines that we'd like to see --

1 JUDGE CHACHKIN: Well, I certainly will look at
2 whatever material you have. I might say it's my understanding
3 after speaking to Judge -- that the Chronicle proceeding in
4 San Francisco is broadcast by Chronicle. There was a question
5 that -- I think one of the issues they were slanting the news
6 and Chronicle did broadcast the proceedings. Apparently they
7 broadcast it live without any editing. I assume this was to
8 rebut a claim that they slanted news. But that's the only
9 instance that I'm aware of in which there was broadcast of a
10 hearing.

11 MR. SHOOK: Your Honor, was there a published
12 decision relative to allowing Chronicle to do that?

13 JUDGE CHACHKIN: I don't know. I have not looked it
14 up. I just spoke to my colleague and he mentioned to me he
15 was the lawyer in that proceeding and he recalled that they
16 were broadcasting the proceeding, so whether it was done
17 publicly, you know, public statements or what, I don't know.

18 MR. SHOOK: So approximately this occurred in the
19 late 60s, early 70s?

20 JUDGE CHACHKIN: Whenever the Chronicle proceeding
21 was. I think that was the time frame, yes.

22 MR. COHEN: Your Honor, are you going to -- this
23 motion that is -- comes as a surprise to me. Are you going to
24 stay your ruling, so to speak, until you consider --

25 JUDGE CHACHKIN: Well, I haven't made a ruling yet.

1 I've -- as far as Trinity is concerned I've indicated to CNN
2 officials that I would advise them -- when Mr. Crouch was
3 going to testify and they could just make a decision then
4 when, when to appear with their video cameras. I will read
5 this motion and the parties have an opportunity and perhaps
6 we'll take it up tomorrow morning if someone wants to discuss
7 it. I obviously don't have the time to read it now. So we'll
8 take it up first thing tomorrow morning.

9 MR. TOPEL: Yes, Your Honor. I'll try -- and I will
10 try to have a response to you no later than tomorrow morning
11 or by perhaps the end of today.

12 JUDGE CHACHKIN: I'd appreciate it. I'd appreciate
13 that, Mr. Topel. All right. Let's continue now and we were
14 proceeding with --

15 MR. EMMONS: Your Honor, I have one very brief --

16 JUDGE CHACHKIN: Yes.

17 MR. EMMONS: -- housekeeping matter, if I may, at
18 the start.

19 JUDGE CHACHKIN: Yes.

20 MR. EMMONS: I neglected at the end of the
21 presentation of the Trinity exhibits yesterday on the
22 comparative case to mention, and perhaps it was implicit, that
23 by stipulation between Glendale and Trinity three of the
24 witnesses who Glendale had noticed for cross-examination under
25 the comparative issue have been released from, from that

1 notice and they are Michael Everett, Teresa Robin Downing and
2 Lindy Dressler, and I wanted to put that on the record solely
3 so that those persons could now plan their schedules because
4 they've been holding their schedules open for the next three
5 weeks in anticipation of maybe having to come here.

6 JUDGE CHACHKIN: All right.

7 MR. SCHAUBLE: Your Honor, it's my understanding --
8 I've been informed by counsel for TBS that the sponsoring
9 witness they'll be offering concerning the program logs in
10 Exhibit 35 will be somebody other than one of those three
11 individuals, and on that basis I concur.

12 JUDGE CHACHKIN: I'm -- I just want to bring up
13 something. I mentioned yesterday, speaking of the logs, that
14 the Commission breaks it down into three categories, news,
15 public affairs and non-entertainment programming. And I would
16 only urge that you might -- when this witness submits his
17 written testimony that if it would be possible to include a
18 breakdown consistent with the Commission's -- what the
19 Commission looks at rather than the mention of religion and
20 all the other subjects which are not separate categories
21 considered by the Commission.

22 MR. EMMONS: Very well, Your Honor. Thank you.

23 MR. HONIG: Your Honor, yesterday we've also spoken
24 of the, the absence of a delineation between national local
25 programming by source. There were a number of programs taped

1 in Miami that were identified in Exhibit 35, Tab B, which we
2 weren't clear whether they had been logged as national or
3 local. Could I suggest that perhaps the witness who is being
4 offered if he or she has knowledge of that could address that
5 issue in her testimony as well?

6 MR. EMMONS: As I indicated --

7 JUDGE CHACHKIN: The source of material we're
8 talking about?

9 MR. EMMONS: Yes. I'm going to need to -- and
10 perhaps this is best done informally off the record, but I'll
11 need to confer with Mr. Honig to be exactly clear which
12 paragraph he's talking about.

13 JUDGE CHACHKIN: I think that would be a good idea
14 to proceed -- a good way to proceed. All right. Let's
15 continue then. Ms. Duff? Is that who we're doing?

16 MR. TOPEL: Yes, Your Honor. I think we had left
17 off -- you had ruled on paragraph 42.

18 JUDGE CHACHKIN: 42 was it?

19 MR. TOPEL: So we're up to 43 is my understanding.

20 JUDGE CHACHKIN: All right. Any objections --

21 MR. COHEN: Yes.

22 JUDGE CHACHKIN: What is that?

23 MR. COHEN: You had, you had ruled on --

24 MR. TOPEL: Yes. Yes, because the last discussion
25 was the item. I think Mr. Schonman raised it about Ms. Duff's

1 state of mind about wanting to be the one to use the FCC
2 policy and, and we discussed that and --

3 MR. COHEN: Thank you. Your Honor -- my next
4 objection, Your Honor, is in paragraph 47 and --

5 JUDGE CHACHKIN: Before we go on, does the Bureau
6 have any objection prior to 46?

7 MR. SCHONMAN: Yes, sir, we do. Paragraph 43.

8 JUDGE CHACHKIN: 43?

9 MR. SCHONMAN: Mrs. Duff is testifying in the next
10 to the last sentence about paragraph -- about her -- on the
11 Board and she states, "He thought," and I don't know if, if
12 Mrs. Duff is competent to testify as to what someone else
13 thought.

14 JUDGE CHACHKIN: Well, Mr. May is going to be here
15 as a witness --

16 MR. TOPEL: -- Espanoza, yes, Your Honor.

17 JUDGE CHACHKIN: -- so you'll be able to find out
18 -- well, when you're saying he thought as I did or you're just
19 saying whether he expressed himself orally? Is that your
20 concern?

21 MR. SCHONMAN: Yes.

22 JUDGE CHACHKIN: Or whether she was attempting to
23 divine what he was thinking? I mean, that's --

24 MR. TOPEL: It's intended as a description of the
25 conversation.

1 JUDGE CHACHKIN: You could ask her that, but that's
2 what I would assume it meant, that this is what he orally
3 expressed to her.

4 MR. SCHONMAN: Very well.

5 JUDGE CHACHKIN: You could find out from Mr. May, as
6 well as this witness. Any other objection?

7 MR. SCHONMAN: Thank you.

8 JUDGE CHACHKIN: Anything further up to 47?

9 MR. SCHONMAN: No, sir.

10 JUDGE CHACHKIN: All right. Your objection to 47
11 then?

12 MR. COHEN: Your Honor, the problem with 47 is, is
13 that the witness didn't sign the Odessa application and
14 Dr. Crouch signed it, who'll be here, and I don't think that
15 the witness is competent to testify to what, to what claim it
16 was, that is, NMTV made that claim to the FCC in good faith
17 inasmuch as she didn't sign the application.

18 MR. TOPEL: Your Honor, there's testimony that the
19 witness was the person responsible for reviewing it before it
20 was filed.

21 MR. COHEN: Well, I'm not so sure that the, that the
22 testimony is as clear as -- you have to look at paragraph 48,
23 Your Honor, and I'm not trying to quibble, but the witness'
24 testimony is equivocal. If you'll see on line 3 of paragraph
25 48 she says, "I believe I did so," and that is not the same as

1 I did, and so I'm not sure at all on this matter and I don't
2 think that the, the language in 48 properly qualifies my
3 objection in paragraph 47. This material should come in
4 through the person that signed the application, and there is
5 testimony by Mr. -- by Pastor Crouch and he'll be available
6 for cross-examination and I don't think it's competent to
7 introduce this testimony through Mrs. Duff.

8 MR. TOPEL: Your Honor, this witness can testify to
9 her knowledge and understanding about an application that was
10 filed even if she was not the one who signed the application
11 and Mr. Cohen can examine her on whether she knew about the
12 application, whether her state of mind about it being filed
13 and what it was intended to tell the Commission or whether she
14 had any such intent or knowledge is subject to -- for
15 MR. Cohen to test, but this is not a witness who was detached
16 from this Odessa process, as her testimony reveals. She
17 negotiated the contract. She spoke with counsel about, about
18 it and she indicated that her normal practice was to review
19 things and she believed she reviewed this. And she certainly
20 has indicated that she was aware through Mr. May's advice that
21 National Minority Television was going to claim the
22 opportunity to own this station based on its belief that it
23 was minority controlled, so this is the witness' testimony of
24 her state of mind about the application.

25 MR. COHEN: But, Your Honor --

1 JUDGE CHACHKIN: I -- Mr. Cohen's difficulty is that
2 the witness has not stated that she reviewed this document or
3 she merely stated she believed she did --

4 MR. COHEN: And she said --

5 JUDGE CHACHKIN: -- based on the fact that she
6 normally reviews filings. But if the witness is unsure
7 whether or not she reviewed the document then it raises the
8 question how could she testify about the document.

9 MR. COHEN: Exactly.

10 JUDGE CHACHKIN: Apparently she may not have any
11 knowledge to.

12 MR. TOPEL: Well, it indicates that she was, I would
13 say, very slightly unsure about it before its filing. That is
14 not to say that she didn't know about it having been filed or
15 after its filing or what was in it, but I think this is proper
16 to be covered on examination of the witness and not on
17 admissibility.

18 JUDGE CHACHKIN: Well, the fact that she might have
19 become aware of it after its filing, how does that have
20 anything to do with what was represented to the Commission and
21 what was the intention of the -- putting the material in the,
22 in the document?

23 MR. TOPEL: Well, the application would pend for a
24 period of time before it was granted, so those would be
25 ongoing submissions on which the Commission would act.

1 JUDGE CHACHKIN: I don't know how she could testify
2 about things in the application if she had nothing to do with
3 the application and, and that's my difficulty here. However,
4 what -- the way I propose to deal with this is I will receive
5 this. However, Mr. Cohen develops that the witness, in fact,
6 does not recall participating in the review of the document
7 and does not recall, in fact, reviewing the document or her
8 memory of it merely is based on the fact that -- a belief and
9 nothing more simply because she signed and submitted some
10 other filing, then I would be disposed to grant a Motion to
11 Strike this material on the grounds that she doesn't have
12 personal knowledge of it.

13 MR. SCHONMAN: Your Honor, while we're on paragraph
14 47, keeping in mind your, your ruling a moment ago, I'd like
15 to focus attention on the very last clause of that sentence --
16 I'm sorry, that paragraph, the phrase, "Which had been the
17 case ever since the company began." I think that phrase could
18 be stricken at this time for reasons similar to those
19 yesterday.

20 JUDGE CHACHKIN: Well, I certainly will strike that.
21 That's a conclusion to be drawn by the triers of the fact.
22 That's a conclusion.

23 MR. COHEN: What are you going to strike,
24 Your Honor?

25 JUDGE CHACHKIN: The phrase which begins, "Which had

1 | been the case ever since the company began."

2 | MR. SCHONMAN: Thank you, Your Honor.

3 | JUDGE CHACHKIN: Let's continue.

4 | MR. COHEN: Your Honor, I had, I had some objections
5 | in 48, but in view of your ruling I think what I'll do is just
6 | -- I will abide by your ruling, of course, and then revisit 48
7 | after cross-examination. Is that --

8 | JUDGE CHACHKIN: All right. Yes. That's what I had
9 | in mind.

10 | MR. COHEN: Turning to 49, Your Honor --

11 | JUDGE CHACHKIN: Yes.

12 | MR. COHEN: -- this is, this is Catch 22,
13 | Your Honor. "I accept responsibility for my oversight in
14 | failing to catch them when I reviewed the application," and
15 | it's not clear that she's ever -- that she ever did review the
16 | application, so this is the kind of -- of what happens when
17 | you permit evidence to come in that's not competent. There's
18 | no -- based on the preceding paragraph there's no basis for
19 | you to believe that she did review the application. And so
20 | what Mr. Topel in his skillful way has done is he started off
21 | saying she believed it and now it's a finding of fact that she
22 | reviewed the application.

23 | MR. TOPEL: Your Honor, I think that should fall
24 | under the umbrella of the ruling that you have made.

25 | JUDGE CHACHKIN: Well, it's certainly an

1 inconsistency between a belief and now an assurance that she
2 reviewed the application, and I assume this could be pointed
3 out in your cross-examination.

4 MR. COHEN: Well, I think I shouldn't have to have
5 that burden.

6 JUDGE CHACHKIN: Well, what I'm going to do is what
7 I did with 47 and 48, is allow it in at this time with the
8 understanding that it will be stricken if, in fact, develops
9 that she, she cannot state unequivocally that she reviewed the
10 application.

11 MR. SCHONMAN: Your Honor, I have a further problem
12 again on 49.

13 MR. COHEN: I do also, but I'll be glad to defer to
14 my friend.

15 JUDGE CHACHKIN: All right.

16 MR. SCHONMAN: In the first sentence Mrs. Duff
17 states, "While I know that my focus at the time was on the
18 fact that minorities controlled NMTV's Board of Directors,"
19 and then she continues on. I don't know the extent to which
20 Your Honor is willing to, to rewrite someone's testimony, but
21 I'm concerned about her reference to the, to the words "the
22 fact."

23 JUDGE CHACHKIN: Well, that's really her -- go
24 ahead.

25 MR. SCHONMAN: It's really her belief and it's a

1 conclusion whether or not minorities controlled the Board.
2 Now, she may hold, she may hold the belief and she can state
3 that she holds that belief, but to characterize it as a fact I
4 think is conclusory.

5 JUDGE CHACHKIN: Well, I'm going to strike the, the
6 beginning of the first sentence and all it will read is, "I do
7 not know why these mistakes occurred."

8 MR. SCHONMAN: Well, I have another problem with the
9 reference to mistake because I think it's a matter which
10 Your Honor has to decide whether it was a -- whether the
11 errors were mistakes or the errors were something else.

12 JUDGE CHACHKIN: But these are her testimony that
13 these were mistakes. Obviously you have a right to challenge
14 it in cross-examination. This is what she's contending, they
15 were mistakes.

16 MR. SCHONMAN: I understand that.

17 JUDGE CHACHKIN: I think she has the right to make
18 that contention but you have a right to challenge it.

19 MR. SCHONMAN: Very well.

20 JUDGE CHACHKIN: What I won't permit is, however,
21 conclusions which have to be -- which will be ultimately
22 decided after all the facts come in. If she wants to claim
23 that she made -- that these were merely mistakes I see -- I
24 think she can make that claim.

25 MR. TOPEL: Your Honor --

1 MR. COHEN: What is your ruling, Your Honor?

2 JUDGE CHACHKIN: My ruling is that the sentence that
3 I will allow is, "I do not know why these mistakes occurred."

4 MR. COHEN: You're allowing that in?

5 JUDGE CHACHKIN: Allowing -- this is her --

6 MR. COHEN: Yes, I understand.

7 MR. TOPEL: I -- Your Honor --

8 JUDGE CHACHKIN: I'm not going to permit this
9 constant attempt here to try to try the case by conclusions.
10 I could require you to go back and rewrite this entire exhibit
11 in such a fashion that you eliminated all these conclusions,
12 all these afterthoughts, attempting to insinuate that minority
13 control existed all the time and just limit yourself to the
14 facts as she knows it and then we'll decide whether on the
15 basis of the facts control existed or did not. That's one
16 thing I could do and I'm almost tempted to do so rather than
17 go through this laborious process of having to deal with these
18 conclusions put in every paragraph here which is making it
19 very difficult and is taking us an awful long time to get
20 through this material. Now, she can testify as a witness like
21 anyone else can, Mr. Topel, and you should have been aware of
22 the fact that what you, in effect, was doing was having her on
23 the stand and asking her questions on direct testimony, and
24 you should have been aware that, that you couldn't expect that
25 when you were asking her to reach conclusions that such

1 material would be allowed in if you, if you -- if she was on
2 direct and you were orally examining her. Now, why you
3 thought that you can get away with it in written testimony, I
4 don't understand, but that's what's so difficult and I'm
5 tempted, as I say, to make you redraft this entire document
6 using it question and answer as you would on -- as you would
7 normally if you were orally questioning the witness and get
8 rid of all these conclusions which aren't proper. I may be
9 forced to do that if we continue with having all these -- if
10 this continues to occur throughout this massive document.
11 Perhaps there is definitely a distinct advantage in having the
12 witness testify orally on direct. You don't deal with these
13 problems as you would when someone is afforded an opportunity
14 to put out their examination, direct examination, in writing
15 and they can throw in every -- all kinds of material that
16 ordinarily would not be allowed in. Let's continue.

17 MR. COHEN: The next -- well, in 49, Your Honor, "I
18 do know that I did not intentionally make the errors and I do
19 not believe that anyone did." I think that that sentence is
20 objectionable on several grounds. As far as her belief that
21 anyone did, that -- she's not -- there's no -- she's not
22 competent to testify to that and "I do know that I did not
23 intentionally make the errors" is subject to the same vice.
24 it's conclusory and again here this is bootstrapping because
25 -- if you will, of course, understand, Your Honor, it's not --